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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

IN RE: OSCAR D. TERAN, Debtor

**Bankruptcy No. 10-31718 DM
Chapter 7**

**OSCAR D. TERAN, on behalf of himself and all
those similarly situated,**

Adversary No. 20-

Plaintiffs,

v.

**NAVIENT SOLUTIONS, LLC, NAVIENT
CREDIT FINANCE CORPORATION,**

Defendants.

CLASS ACTION COMPLAINT

Plaintiff Oscar D. Teran, by and through his undersigned counsel, hereby files this Class
Action Complaint upon personal knowledge as to those matters within his knowledge, and upon

information and belief as to all other matters, as follows:

I. PRELIMINARY STATEMENT

1. Plaintiff brings this consumer class action on behalf of himself and similarly situated consumers pursuant to the United States Bankruptcy Code. Defendants Navient Solutions, LLC and Navient Credit Finance Corporation have pursued a uniform business practice that deprives consumers of the rights granted to them by discharge injunctions entered by this Court.

2. Specifically, Defendants knowingly and willfully pursue a pattern and practice to collect on student loans as if they were non-dischargeable, after the Bankruptcy Court has determined that the consumer is entitled to a discharge of such obligations and has entered a court order to that effect.

3. Plaintiff brings this action to enforce his and others' rights under the law.

II. JURISDICTION AND VENUE

4. This Adversary Proceeding is brought under Bankruptcy Case Number 10-31718 DM.

5. This Court has jurisdiction over this Adversary Proceeding pursuant to 28 U.S.C. §§ 157(b), 1331, 1334(b). This is a core proceeding under Title 11 because it concerns a determination as to the dischargeability of a debt. 28 U.S.C § 157(b)(2)(I). Furthermore, this Court has supplemental jurisdiction over this Adversary Proceeding pursuant to 28 U.S.C. § 1367 because the additional claims are related to the core proceeding.

6. This Adversary Proceeding is brought pursuant to 11 U.S.C §§ 105, 523(a)(8) and Federal Rules of Bankruptcy Procedure 7001(6), (9) and 7023. Plaintiff consents to entry of a final order or judgment by the Bankruptcy Court.

1 7. Venue is proper in the Northern District of California pursuant to 28 U.S.C. § 1409
2 because this matter arises in and is related to a bankruptcy case in this district.

3 **III. PARTIES**

4 8. Oscar D. Teran is an individual and a resident of this State who filed in this district
5 for relief under Title 11 in 2010 and was granted a bankruptcy discharge on August 17, 2010.

6 9. Navient Solutions, LLC is a business entity that in the ordinary course of business
7 regularly, on behalf of itself or others, engages in the servicing and collection of consumer debt.
8 Navient Solutions, LLC is registered as a Limited Liability Company in the State of Delaware with
9 an address at 13865 Sunrise Valley Drive, Herndon, Virginia 20171. Navient Solutions, LLC is
10 authorized to do business in the State of California and may be served through its registered agent
11 CSC-Lawyers Incorporation Service Company, 2710 Gateway Oaks Drive, Suite 150N,
12 Sacramento, California 95833.
13

14 10. Navient Credit Finance Corporation is a business entity that in the ordinary course
15 of business regularly, on behalf of itself or others, engages in the origination, servicing and
16 collection of consumer debt. Navient Credit Finance Corporation has a principal place of business
17 at 2001 Edmund Halley Drive, Reston, VA, 20191 and may be served through its registered agent
18 CSC, 111 East Main Street, Richmond, VA, 23219.
19

20 **IV. STATEMENT OF FACTS**

21 **A. Section 523(a)(8) Of The Bankruptcy Code.**

22 11. In 1978, Congress enacted section 523(a)(8) of the Bankruptcy Code to prohibit the
23 discharge of federal student loans during the first five years of repayment (unless payment would
24 constitute an undue hardship). Through a series of amendments, which first lengthened and then
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1 eliminated the five-year non-dischargeability time frame, it became increasingly difficult for
2 debtors to attain discharges of their student loan debts.

3 12. In 2005, after extensive lobbying, private education lenders and debt collectors won
4 limited protection in bankruptcy for some of their educational loan products.¹ Specifically,
5 Congress limited protection for private education loan instruments to the extent that such money
6 supplemented and mirrored federal student lending: money lent to eligible students at Title IV
7 accredited schools for tuition, room, board, and books (“Qualified Education Loans”).²
8

9 13. But commercial lenders were not satisfied with the volume of Qualified Education
10 Loans that they could originate. The paperwork was burdensome, schools would not certify sums
11 in excess of tuition, and the Title IV accreditation requirement prevented lending to thousands of
12 for-profit colleges and high schools that had not obtained Title IV accreditation.

13 14. Thereafter, lenders initiated new programs that lent money directly to students
14 attending unaccredited schools (hereinafter, “Consumer Education Loans”). Consumer Education
15 Loans were much easier to originate because they bypassed the certification requirements codified
16 in the Higher Education Act. Because the unaccredited schools were not Title IV-eligible, these
17 loans were not and are not Qualified Education Loans, and thus are not excepted from discharge
18 pursuant to section 523(a)(8)(B). Like credit card debt, such loans are simply unsecured consumer
19 debts and are discharged automatically upon entry of a discharge injunction order.
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23 ¹ Bankruptcy Abuse and Consumer Protection Act Pub. L. No. 109-8, § 220, 119 Stat. 23,
24 59 (2005).

25 ² *In re Decena*, 2016 WL 1371031, *6 (Bankr. E.D.N.Y. Apr. 4, 2016) (“[S]ection
26 523(a)(8)(B) excepts from discharge loans for attending an ‘eligible educational institution,’
27 recognition of which is dictated by the Federal School Codes List for the years 2004–05, which
identify ‘[a]ll postsecondary schools that are currently eligible for Title IV aid.’”).

1 **1. The Application of Section 523(a)(8)**

2 15. Prior to 2005, section 523(a)(8) was easy to apply because the exception to
3 dischargeability was absolute. If a student loan was issued or guaranteed by the federal
4 government, it was non-dischargeable absent a showing of “undue hardship.” This fueled the
5 belief that all student loans are non-dischargeable. But private lenders were only given qualified
6 protection in 2005 such that section 523(a)(8)(B) only excepts some private education loans from
7 discharge. This created an opportunity for unscrupulous creditors to exploit the application of
8 section 523(a)(8) and deceive debtors into thinking that all private student loans, like their federal
9 cousins, were excepted from discharge.

10 16. This problem was made worse because section 523(a)(8) is “self-executing” and thus
11 its correct application relies on the good faith and honesty of creditors. When a debtor files a
12 bankruptcy petition, the debtor includes all unsecured debts on a Schedule F form, listing only the
13 amount of the debt, the name of the creditor, and the consideration received. After demonstrating
14 compliance with the Bankruptcy Code, a court then issues an order discharging all pre-petition
15 debts listed on the bankruptcy petition except for those listed in section 523(a).³ Importantly, the
16 discharge order does not specifically state which loans, if any, are presumptively excepted from
17 discharge. Rather, it states that the order does not discharge some debts, including “debts for most
18 student loans.”

19 17. If a creditor believes that a debt they hold is excepted from discharge, it is their
20 legal burden to prove that the debt is encompassed by section 523(a)(8).⁴ Once the creditor

21 ³ 11 U.S.C. § 727(b) (“Except as provided in section 523 of this title, a discharge under
22 subsection (a) of this section discharges the debtor from all debts that arose before the date of the
23 order for relief under this chapter.”).

24 ⁴ *Owens v. Owens*, 155 F. App'x 42, 43 (2d Cir. 2005) (“It is the creditor seeking an exception
25 to discharge who bears the burden of proving facts coming within one of the § 523 exceptions.”);
26 *In re Renshaw*, 222 F.3d 82, 86 (2d Cir. 2000) (“Because bankruptcy is both a right of the debtor,
27 and a remedy for the creditor . . . a proper balancing of those competing interests requires the
creditor to prove by a preponderance of the evidence that its claim is one that is not
dischargeable.”); *In re Metcha*, 310 F.3d 308, 311 (3d Cir. 2002) (stating that creditor opposing

1 proves the debt is presumptively non-dischargeable, the burden then shifts to the debtor to prove
2 that repaying the debt would constitute an “undue hardship.”⁵ Absent an adversary proceeding,
3 any educational debt not encompassed by section 523(a)(8) is automatically and as a matter of law
4 discharged upon entry of the discharge order.⁶ Accordingly, it is left to the creditors to determine
5 whether their particular educational loan is excepted from discharge by section 523(a)(8), and,
6 where confusion exists, seek clarity from the court. The creditor’s good faith and the threat of
7 sanctions are the only checks on compliance with discharge injunctions.

8 **2. Creditors Manipulate the Application of Section 523(a)(8) and Deceive**
9 **Debtors Into Believing Their Non-Qualified Student Loans Were Not**
10 **Discharged**

11 18. For the following reasons, among others, Defendants have no objectively
12 reasonable basis for concluding that their conduct as described herein was lawful.

13 19. Not content with the protections won from Congress in 2005, creditors soon devised
14 a scheme to manipulate this presumption of non-dischargeability and deceive debtors and the
15 bankruptcy courts into thinking that all private student loans, both qualified and non-qualified, to
16 both accredited and unaccredited schools, were excepted from discharge. To effectuate this
17 scheme, creditors would start sending debtors requests for payment after the entry of the
18 bankruptcy discharge order and the closing of the bankruptcy case.

19
20 discharge has burden of establishing that the obligation is an educational loan under section
21 523(a)(8)).

22 ⁵ See *In re Bronsdon*, 435 B.R. 791, 796 (B.A.P. 1st Cir. 2010) (“The creditor bears the
23 initial burden of establishing that the debt is of the type excepted from discharge under § 523(a)(8).
Once the showing is made, the burden shifts to the debtor to prove that excepting the student loan
debt from discharge will cause the debtor and her dependents ‘undue hardship.’”).

24 ⁶ *In re Meyer*, No. 15-13193, 2016 WL 3251622, at *2 (Bankr. N.D. Ohio June 6, 2016)
25 (“For the reasons stated in the debtor’s motions and the *Decena* decision, the Court finds that the
26 debtor’s student loans were discharged on September 16, 2015, because they do not fall within
27 11 U.S.C. § 523(a)(8). The Court further finds that the student loan servicers violated the
discharge injunction of § 524(a)(2) by attempting to collect on the student loan accounts after the
date of the debtor’s discharge.”).

1 20. Consequently, a law that was originally designed to prevent students from taking
2 advantage of the bankruptcy system enabled unscrupulous creditors to take advantage of the
3 bankruptcy system. These loans are disproportionately issued to low-income minority students
4 who lack the resources and knowledge to seek relief in an adversary proceeding, which is an
5 expensive and time-consuming undertaking. In fact, only one tenth of one percent (0.1%) of
6 debtors in bankruptcy seek to discharge their student debts.⁷ In the rare event a debtor has filed an
7 adversary proceeding, creditors often settle or forgive student debts that were already legally
8 discharged, thereby preventing courts from discovering that these debts were never entitled to a
9 presumption of non-dischargeability in the first instance, and ensuring that they are able to
10 continue collecting on 99.9% of other discharged debts without consequence.

11 **3. Defendants Reveal Their Bad Faith By Relaying Different Information**
12 **To The SEC And Sophisticated Investors**

13 21. During the post-2005 time frame, student loan lenders were securitizing these debts
14 for sale on the secondary market. Lenders were concerned that if they represented to investors that
15 all private student loans were non-dischargeable in bankruptcy, sophisticated investors would
16 easily enough discover the misrepresentation (based on a plain reading of the statute), and issuers
17 would be liable for securities violations.⁸

18 22. Major lenders and underwriters therefore included in student loan asset-backed
19 securities' prospectuses language warning investors that, pursuant to section 523(a)(8), only
20 private loans made for qualified expenses were excepted from discharge.⁹

21 ⁷ Jason Iuliano, AN EMPIRICAL ASSESSMENT OF STUDENT LOAN DISCHARGES AND THE
22 UNDUE HARDSHIP STANDARD, 86 Am. Bankr. L.J. 495, 505 (2012) (stating that in 2007, at least,
23 only .01% of all debtors in bankruptcy with student loans filed an adversary proceeding seeking
24 discharge).

25 ⁸ See, e.g., 15 U.S.C. § 78j.

26 ⁹ See SLM Loan Trust 2008-3 Prospectus Supplement dated October 16, 2007, at 32-33
27 (“Risk of Bankruptcy Discharge of Private Credit Student Loans: Private credit student loans ***made***
 for qualified education expenses are generally not dischargeable by a borrower in bankruptcy ...
 direct-to-consumer loans are disbursed directly to the borrowers based upon certifications and

1 23. In addition, in a federal pleading filed in the U.S. Bankruptcy Court for the Southern
2 District of Texas, *Crocker v. Navient Solutions, LLC, et al*, Case No. 16-03175, Navient is alleged
3 to have been warning shareholders in investor presentations that Career Training loans — *i.e.*, one
4 form of non-qualified loans made to students at unaccredited colleges and high schools — are
5 dischargeable in bankruptcy. *Crocker*, ECF 243, at ¶ 19.

6 **B. Plaintiff Borrowed A Consumer Education Loan And Sought Relief Under Title 11**

7 24. On or about February 13, 2008, Plaintiff Oscar D. Teran incurred a Consumer
8 Education Loan in the form of a Bar Study Loan issued by Sallie Mae Bank (the “Bar Study
9 Loan”). This debt was used to pay for expenses associated with studying for the Texas Bar
10 Examination.
11

12 25. The Bar Study Loan was subsequently transferred from Sallie Mae Bank to SLM
13 Education Credit Finance Corporation, which subsequently changed its name to Navient Credit
14 Finance Corporation. Ultimately, the Bar Study Loan was transferred to Navient, LLC for
15 servicing.
16

17 26. In May 2010, the Plaintiff sought relief under Title 11 in this Court in Case No. 10-
18 31718, *In re Oscar D. Teran*, formerly pending before this Honorable Court.

19 27. Plaintiff properly scheduled the Bar Study Loan in Schedule F of his bankruptcy
20 filing, in the amount of \$15,752.00.
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24 warranties contained in their promissory notes, including their certification of the cost of attendance
25 for their education. This process does not involve school certification as an additional control and,
26 therefore, may be subject to some additional risk that ***the loans are not used for qualified education***
27 ***expenses***. If you own any notes, you will bear any risk of loss resulting from the discharge of any
borrower of a private credit student loan to the extent the amount of the default is not covered by
the trust’s credit enhancement.”) (Emphasis added).

1 28. Defendants received notice of Mr. Teran's bankruptcy filing and the scheduling of
2 the Bar Study Loan.

3 29. Plaintiff did not reaffirm the Bar Study Loan.

4 30. On August 17, 2010, this Court ordered discharge of all Plaintiff Teran's pre-petition
5 debt.

6 31. The Bar Study Loan was not excepted from discharge because the loan was not
7 made, insured, or guaranteed by a governmental unit, or made under any program funded in whole
8 or in part by a governmental unit or nonprofit institution. 11 U.S.C. § 523(a)(8)(A)(i).

9 32. The Bar Study Loan was not excepted from discharge because the loan was not an
10 obligation to repay funds received as an educational benefit, scholarship, or stipend. 11 U.S.C. §
11 523(a)(8)(A)(ii).

12 33. The Bar Study Loan was not excepted from discharge because the loan was not a
13 qualified education loan as defined in section 221(d)(1) of the Internal Revenue Code of 1986. 11
14 U.S.C. § 523(a)(8)(B).

15 34. Defendants were notified of the entry of Plaintiff Teran's discharge order.

16 35. Despite their legal burden, Defendants did not file an adversary proceeding to
17 contest the dischargeability of the Bar Study Loan.

18 36. Instead of charging off the Bar Study Loan, after Mr. Teran's discharge, Defendant
19 Navient Solutions, LLC thereafter sought to collect and/or induce payment on this otherwise
20 discharged debt in violation of this Court's Order and the Bankruptcy Code.

21 37. Defendants sent regular statements of the Bar Study Loan to Mr. Teran as a means
22 of collection of the discharged debt.
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1 38. Defendants also reported Mr. Teran's Bar Study Loan to consumer reporting
2 agencies.

3 39. Communicating credit information which is known or should be known to be false
4 is an illegal debt collection practice. 15 U.S.C. § 1692e(8).

5 40. The reporting of a discharged debt on a consumer's credit report has a negative
6 effect on the consumer's credit score and the ability of him or her to obtain credit.

7 41. As a result of Defendants' post-discharge collection actions, Plaintiff Teran has made
8 timely payments to Defendants on the discharged debt.

9 42. Defendants' collection activity after the Plaintiff's bankruptcy discharge was in
10 violation of this Court's discharge order and must be sanctioned.

11
12 **C. All Class Members Were Subjected To A Similar Practice**

13 43. Defendants have been pursuing the practice of collecting discharged debt as
14 described herein for at least the past ten years, and probably longer, since October 17, 2005 was the
15 effective date of the Bankruptcy Abuse Prevention and Consumer Protection Act.

16 44. All Class members were subjected to a similar practice.

17 45. All Class members borrowed various types of Consumer Education Loans from
18 Defendants and their predecessors to attend unaccredited colleges, secondary schools, trade schools,
19 and professional skills programs.

20 46. All Class members filed for bankruptcy protection in the bankruptcy courts of the
21 of the Northern District of California.

22 47. All Class members listed their Consumer Education Loans in Schedule F of their
23 bankruptcy filings.

24 48. Defendants received notice of the bankruptcy filings of Class members.

1 49. No Class member reaffirmed their Consumer Education Loan.

2 50. At the conclusion of their bankruptcy cases, all Class members were issued
3 discharge orders.

4 51. These discharge orders extinguished all education-related debt that was not
5 excepted from discharge by 11 U.S.C. § 523(a)(8).

6 52. Notwithstanding the discharge of these debts, Defendants have employed
7 processes, practices and acts designed to mislead Class members into believing that their debts
8 were not discharged and inducing them to make payments on extinguished debts.
9

10 53. Defendants have misled Class members and sought to collect on discharged debts
11 by use of regular statements of amounts purportedly due, dunning letters, text messages, emails,
12 autodialers, and live phone calls demanding repayment.

13 54. In addition, Defendants have continued to report these debts as delinquent to the
14 major credit bureaus to compel payment. The false reporting of the debts as delinquent has a
15 concrete, deleterious effect on the borrower's credit standing, credit score and ability to obtain
16 credit in the future.
17

18 55. In the *Crocker* case described *supra*, Defendants are alleged to have also
19 commenced or continued legal actions against borrowers to compel payment on discharged debts.
20 *Crocker*, ECF 243 at ¶ 35.

21 56. The debt collection activities of the Defendants as described herein caused Class
22 members to pay Defendants on loans that they no longer owed.
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V. CLASS ACTION ALLEGATIONS

57. Pursuant to Rule 23(a), 23(b)(1), 23(b)(2), and 23(b)(3) of the Federal Rules of Civil Procedure, Plaintiff Teran brings this action on behalf of himself and all other persons similarly situated, as representative of the following Class:

Persons who filed for bankruptcy protection in the U.S. Bankruptcy Court for the Northern District of California on or after October 17, 2005, who:

- a. incurred pre-petition loans, whether as borrower or co-signer, that were not guaranteed by any non-profit institution to cover expenses at non-eligible educational institutions as that term is defined in 26 U.S.C. § 221(d);
- b. who listed such loans on Schedule F of their bankruptcy filings;
- c. have never reaffirmed such pre-petition loan debt;
- d. were granted a discharge; and,
- e. have nonetheless been the subject of Defendants' policy of attempting to compel and/or successfully compelling payment of these discharged loans.

58. Plaintiff also brings this action on behalf of himself and as representative of a Subclass consisting of persons with addresses in the State of California who filed for bankruptcy protection in the U.S. Bankruptcy Court for the Northern District of California who:

- a. incurred pre-petition loans, whether as borrower or co-signer, that were not guaranteed by any non-profit institution to cover expenses at non-eligible educational institutions as that term is defined in 26 U.S.C. § 221(d);
- b. who listed such loans on Schedule F of their bankruptcy filings;
- c. have never reaffirmed such pre-petition loan debt;
- d. were granted a discharge; and,
- e. as to whom, within two years before the filing of this Complaint, Defendants reported to credit reporting agencies the balance of such loans as an amount owed by such persons.

1 59. Plaintiff reserves the right to amend the definition of the Class and Subclass, and/or
2 add subclasses, to include or exclude members.

3 60. As described below, this action satisfies the numerosity, commonality, typicality,
4 superiority, predominance, and adequacy of representation requirements of Rule 23 of the Federal
5 Rules of Civil Procedure.

6 **A. Numerosity**

7 61. The persons in the Class are so numerous that joinder of all members is
8 impracticable. In the interest of judicial economy, this dispute should be resolved through a class
9 action.
10

11 62. The number of Class members will likely be in the hundreds, if not thousands. The
12 quantity, identity, and location of Class members are ascertainable through appropriate discovery
13 and may be identified by the records maintained and possessed by Defendants.

14 63. The Class members are geographically dispersed throughout the Northern District
15 of California and elsewhere, as Defendants are or were national providers, holders and servicers
16 of Consumer Education Loans and made these loans available to students nationwide, and Class
17 members may have left the Northern District of California following receipt of their bankruptcy
18 discharges over the last fifteen years.
19

20 64. Upon information and belief, the individual members of the Class, or at least a large
21 portion thereof, lack the means to pursue these claims individually and severally.
22

23 **B. Commonality**

24 65. There are common questions of law and fact affecting the entirety of the Class.
25 Specifically, predominant common questions include, without limitation: (a) whether the Class
26 members' Consumer Education Loans were discharged at the conclusion of their bankruptcy cases;
27

1 (b) whether Defendants violated the applicable discharge orders by seeking to collect and collecting
2 on discharged private education debt; and, (c) whether Defendants violated California law by
3 reporting the balance of discharged Consumer Education Loans to credit reporting agencies as
4 amounts owed.

5 66. Answers to these common questions will drive the resolution of the injuries shared
6 by each member of the Class and Subclass.

7 **C. Typicality**

8
9 67. Mr. Teran's claims against Defendants are representative of those of all Class
10 members. Specifically, the Bar Study Loan is an individual species of Consumer Education Loans
11 originated and serviced by Defendants.

12 **D. Adequacy of Representation**

13 68. Mr. Teran will fairly and adequately represent and protect the interests of the
14 members of the Class. His interests are squarely aligned with those of the individual members of
15 the Class. Plaintiff's counsel are experienced in class action lawsuits and complex commercial
16 litigation, consumer protection, and/or student loan litigation.

17 **E. Predominance and Superiority**

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19 69. There are questions of law and fact common to the Class that predominate over any
20 questions affecting only individual Class members. The questions include, but are not limited to:

21 (i) whether the Class members' loans were discharged at the conclusion of
22 their bankruptcy cases; and

23 (ii) whether Defendants violated the applicable discharge orders by seeking
24 to collect and collecting on discharged loans.

25 70. This action should be maintained as a class action because the prosecution of
26 separate actions by individual members of the Class would create a risk of inconsistent or varying
27

1 adjudications, with respect to individual members, which would establish incomplete standards of
2 conduct for the parties opposing the Class, as well as a practical matter be dispositive of interests
3 of other members not parties to the adjudications, or substantially impair or impede their ability to
4 protect their interests.

5 71. Defendants have acted, or refused to act, on grounds generally applicable to the
6 Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with
7 respect to the Class as a whole.
8

9 72. A class action is a superior method for the fair and efficient adjudication of this
10 controversy. Management of the Class claims is likely to present significantly fewer difficulties
11 than those presented in many individual claims. The identities of the Class members may be
12 obtained from Defendants' records.

13 **VI. CLAIMS FOR RELIEF**

14 **Count One: Violations of the Discharge Orders**

15 73. Plaintiff hereby incorporates the allegations in the preceding paragraphs as if fully
16 set forth herein.
17

18 74. The Consumer Education Loans were discharged pursuant to Class members'
19 discharge orders because they were unsecured consumer loans and not non-dischargeable student
20 loans.

21 75. Defendants were notified of the Class members' discharge orders pursuant to
22 Federal Rule of Bankruptcy Procedure 4004(g).
23

24 76. Defendants nonetheless sought to collect on these debts, either directly or
25 indirectly, by mailing regular statements to Class members, sending dunning letters, text messages,
26 emails, autodialers, and live phone calls demanding repayment, negative reports made to the major
27

1 credit bureaus, failure to update these credit reports, and commencing or continuing legal action to
2 recover the discharged debts in violation of 11 U.S.C § 524.

3 77. There is no objectively reasonable basis for concluding that Defendants' collection
4 of discharged debt might be lawful.

5 78. Plaintiff and Class members request declaratory judgment pursuant to 28 U.S.C. §
6 2201, 11 U.S.C. §§ 105, 523 and Federal Rule of Bankruptcy Procedure 7001(9) that Plaintiff's
7 and Class members' Consumer Education Loans are not non-dischargeable student loans or
8 Qualified Education Loans and were therefore discharged upon entry of the applicable discharge
9 injunctions.
10

11 79. Plaintiff and Class members request that Defendants be cited for civil contempt and
12 ordered to pay restitution and/or disgorgement, and damages in an amount to be determined at trial
13 for the willful violations of the discharge injunctions, and also request an award of attorneys' fees
14 and costs, pursuant to 11 U.S.C § 105.
15

16 80. Plaintiff and Class members request injunctive relief prohibiting Defendants from
17 continuing to seek collection on discharged debts.

18 **Count Two: Dischargeability (11 U.S.C. § 523)**

19 81. Plaintiff incorporates all paragraphs in this Complaint as though fully set forth
20 herein.

21 82. Any and all indebtedness of Plaintiff and Class members to Defendants should be
22 determined dischargeable as outside the scope of the "student loan" exception found in 11 U.S.C.
23 § 523(a)(8).
24

25 **Count Three: California Consumer Credit Reporting Agencies Act**
26
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1 83. Plaintiff brings this claim on behalf of himself and the Subclass for relief against
2 Defendants, and each of them, pursuant to California Civil Code Sections 1785.25 and 1785.31,
3 the California Consumer Credit Reporting Agencies Act (“CCCRAA”).

4 84. Plaintiff incorporates all paragraphs in this Complaint as though fully set forth
5 herein.

6 85. Defendants are each a “person” within the meaning of California Civil Code
7 Section 1785.4(j).

8 86. Defendants are each a “furnisher” within the meaning of California Civil Code
9 Section 1785.25(a).

10 87. Plaintiff is a “consumer” within the meaning of California Civil Code Section
11 1785.3(b).

12 88. Within two years before the filing of this Complaint, Defendants reported to credit
13 reporting agencies the balance of the Bar Study Loan as an amount owed by Plaintiff Teran.

14 89. The credit reports were inaccurate and misleading.

15 90. The credit reports resulted in tradelines adverse to Plaintiff’s credit rating.

16 91. Adverse credit reporting can negatively affect a consumer’s credit score and ability
17 to obtain credit.

18 92. Defendants did not take adequate steps to prevent the credit reports from resulting
19 in tradelines adverse to Plaintiff’s credit rating.

20 93. The credit reports were “consumer reports” as that term is defined by California
21 Civil Code Section 1785.3(c).

22 94. Pursuant to California Civil Code Section 1785.31, Defendants are liable for
23 violating the CCCRAA by furnishing inaccurate and misleading information to consumer
24

1 reporting agencies that it knew, or should have known, was false, in violation of California Civil
2 Code Section 1785.25(a).

3 95. Defendants' inaccurate and misleading reporting of adverse credit information has
4 resulted in damages to Plaintiff including loss of credit rating, reduction of credit score, a chill in
5 applying for credit because Defendants' inaccurate reporting would adversely affect credit rating.

6 96. Defendants' improper reporting was also a substantial factor in compelling Plaintiff
7 to continue making payments to Defendants on the discharged debt through the present.

8 97. The conduct of Defendants was a direct and proximate cause, as well as a
9 substantial factor, in bringing about the injuries, actual damages and harm to Plaintiff and to
10 members of the Subclass as alleged above, and as a result, Defendants are liable to Plaintiff and
11 the Subclass for the full amount of statutory, actual and punitive damages, along with attorney fees
12 and costs of suit and other relief as may be permitted by law.
13

14 **VII. PRAYER FOR RELIEF**

15 In light of the foregoing, Plaintiff and Class members request that judgment be entered
16 against Defendants for:
17

18 A. Declaratory relief that Plaintiff's and Class members' Consumer Education Loans
19 were discharged upon entry of the applicable discharge injunctions;

20 B. Injunctive relief prohibiting Defendants from continuing to seek collection on
21 discharged debts;

22 C. Actual damages and punitive damages, in an amount not less than \$500 for each
23 violation of the discharge orders;

24 D. Restitution and/or disgorgement;

25 E. Attorneys' fees and costs to the fullest extent permitted under the law;
26
27

- 1 F. Prepetition and post-judgment interest;
2 G. Statutory and punitive damages as provided for in California Civil Code Sections
3 1785.25 and 1785.31; and
4 H. Such other such relief as the Court deems just and proper.

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Respectfully submitted,

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**Pro Hac Vice application forthcoming*

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